



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,532	07/07/2003	David H. McFadden		9062
7590 09/22/2005				
DAVID A. BOLTON 1103 CONCORD AVENUE SOUTHLAKE, TX 76092		EXAMINER COCKS, JOSIAH C		
		ART UNIT 3749		PAPER NUMBER
DATE MAILED: 09/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/614,532

Applicant(s)

MCFADDEN, DAVID H.

Examiner

Josiah Cocks

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 95-109 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 95-109 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/27/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Receipt of applicant's amendment filed 6/27/2005 canceling claims 1-94 and adding claims 95-109 is acknowledged.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 95-99, 101, 102, and 104-109 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,327,279 to Guibert ("Guibert") (cited by applicant).

Guibert discloses an invention substantially as described in applicant's claims 95-99, 101, 102, and 104-109. In particular, Guibert teaches a system and method of speed heating a food product with gas comprising the steps of providing a housing (10) defining a heating chamber (area within compartment 14), and providing at least three means (see Fig. 3 and holes of 14a, 14b, and 14c) for directing gas into the heating chamber. Heating means in the form of heaters (18 and 19) and a blower (15) and motor (16) are provided to selectively control a flow of air through the holes in compartment (14) to propel the air at high velocity causing collision in order to rapidly heat food products placed therein (see col. 6, lines 21-56 and Fig. 2). Guibert also discloses conduits for directing gas to and from the chamber (As1 and As2, Fig. 2).

In regard to the recitation that the method relates to speed “cooking” a food product, the examiner does note that Guibert desired only to heat the food products contained within chamber and not “cook” them. However, the purpose for not cooking these products is so that they may be refrozen for later use (see col. 5, lines 29-37). Further, Guibert provides for the interrupted application of heat in order to preventing cooking of the food products and acknowledges that cooking would result if the heat source is not interrupted (see col. 6, line 65 through col. 7, line 17). It has been held that the elimination of a step and its function is obvious if the function is not desired. See MPEP 2144.04(II)(A). The examiner considers that it would be obvious to a person of ordinary skill in the art that were one to eliminate the heat interruption described in Guibert if one is not concerned with merely heating a food product to allow it to be refrozen. Accordingly, the person of ordinary skill would recognize that the method and system of Guibert would then be provided for cooking the food product.

In regard to claims 104-106, Guibert clearly discloses that the gas directed by blower (15) is propelled at high velocity (see Abstract). To have selected a specific velocity, such as that recited in claims 104-106, would be simply a matter of optimizing the prior art disclosure of high velocity and is not regarded as patentably distinct. See MPEP 2144.05 (II)(A).

4. Claims 100 and 103 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,060,701 to McKee et al. (“McKee”).

Guibert teaches all the limitations of claims 100 and 103 except for a damper means and possibly for a variable speed motor for the blower.

McKee teaches a speed cooking/heating oven in the same field of endeavor as Guibert. In McKee, it is recognized that a conduit (20) providing for the circulation of air (i.e. gas, see col. 3, lines 40-42) may include a damper to modify the air flow through the conduit. McKee also discloses the use of a variable speed blower but notes that a damper also desirably serves to provide a similar effect as a variable speed blower when a fixed speed blower is employed (see col. 5, lines 55-59).

Therefore, in regard to claims 7 and 9, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the oven of Guibert to incorporate the damper and variable speed blower as taught in McKee to desirably control the volume of air flow to provide the desired thermal energy for the cooking chamber (see McKee, col. 5, lines 50-59).

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claim 109 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,874,495 (“’495 patent”).

Although the conflicting claims are not identical, they are not patentably distinct from each other because though claim 109 is broader in scope than claim 1 of the ‘495 patent it is claiming the same invention.

7. Claim 109 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of copending Application No. 10/614,532.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claim 109 of this application is boarder in scope but are claiming the same invention as claim 4 of App. 10/614,532.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

*Conclusion*

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent to Pool is cited to show a speed cooking oven. U.S. Patents to Tanaka et al. and Smith ('911) are cited to further show the state of the art concerning colliding air flows. Smith et al. ('435) is cited to further show the state of the art concerning dampers in ovens.

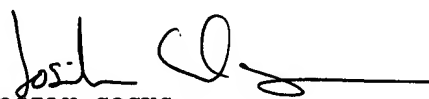
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

Art Unit: 3749

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter, can be reached at (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc  
September 13, 2005

  
JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749